

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.416/2019

Radheshyam Zumbarlal Chandak
...Versus...
Sau. Medha Prashantrao Pophalkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.J. Gilda, Counsel for appellant

CORAM : AVINASH G. GHAROTE, J.
DATE : 06/02/2020

1. Heard Shri Gilda, learned Counsel for the appellant.
2. The short question involved in this matter is, whether the provisions of the Maharashtra Rent Control Act, 1999, are applicable to the suit property in question, which is the contention of the learned Counsel for the appellant, against the position that it is not so, as held by both the Courts below.
3. Shri Gilda, learned Counsel for the appellant invites my attention to the judgment of the Trial Court, dated 27/09/2013, whereby the suit for eviction, as filed by the plaintiff, came to be dismissed, relying upon Exh.70, the agreement of tenancy, by holding, that the tenancy was not

only in respect of open land, but also an *Imla*, i.e., the structure and therefore, the provisions of the Maharashtra Rent Control Act came to be applicable and the suit as filed by the plaintiff on the basis of a notice under Section 106 of the Maharashtra Rent Control Act, therefore, was held not to be maintainable.

4. Shri Gilda, the learned Counsel for the appellant, takes exception to the judgment of the First Appellate Court reversing the decree for dismissal of the suit and granting one for eviction. He submits that in case of reversal, the First Appellate Court has to record strong reasons, which he claims, are absent in the present case. He further submits that the First Appellate Court has misread the admitted documents at Exh.70 and 103 resulting in failure of justice. He, therefore, submits that the judgment of the First Appellate Court being devoid of reasons, is perverse and therefore, cannot be sustained.

5. With the assistance of the learned Counsel for the appellant, I have perused the record. Exh.70 is an agreement of lease dated 06/02/1990 between the plaintiff and the defendant, under which the defendant has taken a lease of open plot bearing Nazul Plot No.1/14. Clause-2 of this agreement at Exh.70, consistently speaks about open land. The mention of an *Imla* (construction) thereupon, is in reference to the position that it is constructed by the defendant/tenant himself, and same would be removed

while vacating the plot. It is worthwhile to note that the tenancy of the defendant is even prior to the agreement of lease dated 06/02/1990 at Exh.70. The tenancy was first created by Exh.103 agreement of lease dated 10/03/1980, in which it is categorically mentioned that an open plot has been given on rent. Exh.103 in fact further refers to the tenancy of the open plot in the name of the father of the defendant, namely, Shri Zumbarlal Chunnilal Chandak on 01/01/1976. Exh.103 further contains clause that in case any construction is made upon the plot by the defendant, the same would be removed at the time of vacation and the possession of the open plot would be handed over. It is not in dispute that since 10/03/1980 till date the open plot has been in continuous possession of the defendant. It is also not in dispute that the landlord has not made any construction over the same, which leads to the only logical inference that the construction of whatever nature is there, has been made by the defendant. This is further substantiated from the language of Clause -2 of Exh.70, where under the defendant has undertaken to remove the same at the time of vacation. It is thus, clearly apparent that the tenancy was created in respect of an open plot by virtue of the document at Exh.103 dated 10/03/1980 and the structure thereupon has been constructed by the tenant on the condition that the same would be removed while vacating the plot. That being so, the finding as rendered by the learned First Appellate Court

cannot be faulted with. A perusal of the judgment of the learned First Appellate Court demonstrates that this position has been taken note of by him in the judgment, which is reason enough to reverse the finding of the Trial Court, which is based upon an erroneous reading of the admitted documents at Exh.70 and 103. That being the position, no substantial question of law is involved or made out. The second appeal is, therefore, without any merits and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

JUDGE

Wadkar, P.S.